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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 KEVIN BELL,

12 Plaintiff,

13 v.

14 WARDEN,

15 Defendant.  
16

No. 2:21-cv-0534 CKD P

ORDER

17 Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. §  
18 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. §  
19 636(b)(1).

20 Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a  
21 declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted.  
22 Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§  
23 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the  
24 initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court.  
25 Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding  
26 month's income credited to plaintiff's prison trust account. These payments will be forwarded by  
27 the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account  
28 exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

1 The court is required to screen complaints brought by prisoners seeking relief against a  
2 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
3 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
4 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek  
5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

6 Plaintiff filed a complaint on January 22, 2021 and then filed an amended complaint on  
7 February 24, 2021. In the spirit of Rule 15(a) of the Federal Rules of Civil Procedure which  
8 generally permits a plaintiff to amend pleadings in the early stages of a case as a matter of course,  
9 the court will screen the amended complaint.

10 The court has reviewed plaintiff’s amended complaint and finds that it fails to state a  
11 claim upon which relief can be granted under federal law. Plaintiff’s amended complaint must be  
12 dismissed. The court will, however, grant leave to file a second amended complaint.

13 If plaintiff chooses to file a second amended complaint the second amended complaint  
14 must be legibly and coherently written.

15 Plaintiff must demonstrate how the conditions complained of have resulted in a  
16 deprivation of plaintiff’s constitutional rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980).  
17 Also, plaintiff must allege in specific terms how each named defendant is involved. There can be  
18 no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a  
19 defendant’s actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976).  
20 Furthermore, vague and conclusory allegations of official participation in civil rights violations  
21 are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

22 It appears plaintiff seeks release from confinement. When a state prisoner challenges the  
23 legality of his custody and the relief he seeks is the determination of his entitlement to an earlier  
24 or immediate release, his sole federal remedy is a writ of habeas corpus. Preiser v. Rodriguez,  
25 411 U.S. 475, 500 (1973). Before plaintiff may bring a federal habeas corpus action, however, he  
26 must present his claim for release to the highest state court, in this case the California Supreme  
27 Court. See Picard v. Connor, 404 U.S. 270, 276 (1971).

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1 Plaintiff also challenges the conditions of confinement. Under the Eighth Amendment,  
2 prison officials have a duty to protect prisoners from harmful conditions of confinement. See  
3 Farmer v. Brennan, 511 U.S. 825, 833 (1994). A prison official may be held liable for subjecting  
4 an inmate to harmful conditions of confinement if an inmate suffers a sufficiently serious injury,  
5 and the prison official was deliberately indifferent to the risk of harm. Id. at 834, 837. The  
6 relevant inquiry is whether prison officials, “acting with deliberate indifference, exposed a  
7 prisoner to a sufficiently substantial risk of serious damage to his future health.” Id. at 834  
8 (internal quotation omitted).

9 Under 42 U.S.C. § 1997e(a) “[n]o action shall be brought with respect to prison conditions  
10 under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail,  
11 prison, or other correctional facility until such administrative remedies as are available are  
12 exhausted.”

13 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to  
14 make plaintiff’s second amended complaint complete. Local Rule 220 requires that any amended  
15 complaint be complete in itself without reference to any prior pleading. This is because, as a  
16 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375  
17 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no  
18 longer serves any function in the case. Therefore, in an amended complaint, as in an original  
19 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

20 In accordance with the above, IT IS HEREBY ORDERED that:

21 1. Plaintiff’s request for leave to proceed in forma pauperis (ECF No. 8) is granted.

22 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees  
23 shall be collected and paid in accordance with this court’s order to the Director of the California  
24 Department of Corrections and Rehabilitation filed concurrently herewith.

25 3. Plaintiff’s amended complaint is dismissed.

26 4. Plaintiff is granted thirty days from the date of service of this order to file a second  
27 amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules  
28 of Civil Procedure, and the Local Rules of Practice. The second amended complaint must bear

1 the docket number assigned this case and must be labeled "Second Amended Complaint." Failure  
2 to file a second amended complaint in accordance with this order will result in a recommendation  
3 that this action be dismissed.

4 Dated: June 30, 2021

  
CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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